

## **EXHIBIT C**

**In The Matter Of:**

*Hodell-Natco Industries, Inc. v.  
SAP America, Inc., et al.*

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*Kevin Reidl  
July 30, 2012*

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*Original File kreidl.txt*

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SAP America, Inc., et al.

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July 30, 2012

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<p>1 UNITED STATES DISTRICT COURT 2 NORTHERN DISTRICT OF OHIO 3 EASTERN DIVISION</p> <p>4 HODELL-NATCO ) Case No. 1:08 CV 2755 5 INDUSTRIES, INC., ) 6 Plaintiffs, ) Judge: Lesley Wells 7 vs. ) Magistrate Judge: 8 ) Greg White 9 ) 10 ) 11 ) 12 ) 13 ) 14 ) 15 ) 16 ) 17 ) 18 ) 19 ) 20 ) 21 ) 22 ) 23 ) 24 ) 25 )</p> <p>1 VIDEOCONFERENCE DEPOSITION OF KEVIN REIDL</p> <p>2 DATE: Monday, July 30, 2012 3 TIME: 1:59 p.m. 4 PLACE: Reminger &amp; Reminger 5 1400 Midland Building 6 101 Prospect Avenue, West 7 Cleveland, Ohio 44115</p> <p>8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>1 NEXTGEN Angela A. O'Neill, RPR 2 REPORTING 6729 Ross Road 3 45882 4 Rockford, Ohio 5 (419) 302-4039 6 Registered Professional Reporters</p>	<p>1 WITNESS INDEX</p> <p>2 3 PAGE</p> <p>4 DIRECT EXAMINATION 5 KEVIN REIDL 6 BY MR. STAR ..... 4</p> <p>7 EXHIBIT INDEX</p> <p>8 Deposition -</p> <p>9 Exhibit 10 11/1/04 Email 165 10 Exhibit 195 1/24/01 Unsigned Letter 37 11 Exhibit 196 11/3/05 Email 177 12 Exhibit 291 Development Agreement 159 13 Exhibit 310 Third Revised Notice of Dep 5 14 Exhibit 311 7/11/03 Email Chain 46 15 Exhibit 312 7/15/03 Email Chain 60 16 Exhibit 313 10/15/04 Email 167 17 18 19 20 21 22 23 24 25</p>
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<p>1 APPEARANCES:</p> <p>2 ON BEHALF OF THE PLAINTIFF:</p> <p>3 MR. P. WESLEY LAMBERT, ESQ. 4 Koehler, Neal, LLC 5 3330 Erieview Tower 6 1301 East Ninth Street 7 Cleveland, Ohio 44114 8 (216) 539-9370 9 wlambert@koehlerneal.com</p> <p>10 ON BEHALF OF THE DEFENDANT SAP AMERICA, SAP AG:</p> <p>11 MR. GREGORY J. STAR, ESQ. 12 Drinker, Biddle, Reath 13 One Logan Square 14 Suite 2000 15 Philadelphia, Pennsylvania 19103 16 (215) 988-2734 17 Gregory.Star@dbi.com</p> <p>18 ON BEHALF OF THE DEFENDANT LSI:</p> <p>19 MR. ROY A. HULME, ESQ. 20 Reminger &amp; Reminger 21 1400 Midland Building 22 101 Prospect Avenue, West 23 Cleveland, Ohio 44115 24 (216) 687-1311 25 rhulme@reminger.com</p>	<p>1 KEVIN REIDL, 2 called as a witness herein, having been first duly 3 sworn, as hereinafter certified, was examined and 4 testified as follows: 5 DIRECT EXAMINATION OF KEVIN REIDL 6 BY MR. STAR: 7 Q. Good afternoon, sir. 8 MR. STAR: Let's start by marking the 9 deposition notice as Exhibit 310. 10 (Whereupon, Exhibit 310 was marked for 11 identification.) 12 BY MR. STAR: 13 Q. Before we go through this, 14 Mr. Reidl, have you ever had your deposition 15 taken before? 16 A. No, I haven't. 17 Q. Okay. You sat through a bunch of 18 them, so you're familiar -- 19 A. I have, yes. 20 Q. -- with the rules, right? 21 A. Correct. 22 Q. Okay. Most important being that 23 you and I let each other talk and finish out 24 what we're saying before we try to talk over 25 each other.</p>

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<p style="text-align: right;">Page 5</p> <p>1 A. Right.</p> <p>2 Q. Okay. If you don't understand my</p> <p>3 question, please let me know. You have seen</p> <p>4 me and heard me ask enough questions,</p> <p>5 sometimes you realize that I might confuse</p> <p>6 something in a question. Please feel free to</p> <p>7 correct me, or let me know that you don't</p> <p>8 understand. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. What's marked as Exhibit 310 is a</p> <p>11 copy of a third revised notice of deposition.</p> <p>12 Have you seen this before?</p> <p>13 A. Yes.</p> <p>14 Q. All right. You understand that</p> <p>15 you're here in part today to respond to some</p> <p>16 of the categories that are identified in this</p> <p>17 deposition notice, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And your testimony in part is as</p> <p>20 the corporate representative of Hodell-Natco,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. What is your current position</p> <p>24 with Hodell?</p> <p>25 A. I'm the president of the company.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay.</p> <p>2 A. Bill Rex, who is one of the</p> <p>3 shareholders, at the time was acting as</p> <p>4 operations manager.</p> <p>5 Q. Anybody else you can think of in</p> <p>6 1999?</p> <p>7 A. That is primarily the -- the</p> <p>8 management team, was the management team.</p> <p>9 Q. So sometime in early 2011, you</p> <p>10 took over as president of the organization?</p> <p>11 A. Yes.</p> <p>12 Q. Between 1999, when you had just a</p> <p>13 general management role, and your time when</p> <p>14 you took over as president, did you have any</p> <p>15 title changes --</p> <p>16 A. Yes.</p> <p>17 Q. -- between that period?</p> <p>18 A. Two.</p> <p>19 Q. Okay.</p> <p>20 A. I took over as general manager of</p> <p>21 the Cleveland operation, and I was given that</p> <p>22 responsibility probably around 2001 or</p> <p>23 thereabouts.</p> <p>24 Q. How many people were you</p> <p>25 overseeing at that point?</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. How long have you served as</p> <p>2 president?</p> <p>3 A. A year and a half.</p> <p>4 Q. When did you first join the</p> <p>5 organization?</p> <p>6 A. In 1999.</p> <p>7 Q. When you joined in 1999, what was</p> <p>8 your role?</p> <p>9 A. No real defined role really, just</p> <p>10 general management, get to know the company.</p> <p>11 Q. In 1999, what was the -- I'm</p> <p>12 going to be asking you a broad question here,</p> <p>13 so if you need to -- need me to break this</p> <p>14 down, I will. What was the management</p> <p>15 structure of Hodell in 1999? Who was the</p> <p>16 president and was there a board of directors,</p> <p>17 for instance?</p> <p>18 A. Otto Reidl was -- was the</p> <p>19 president, and we had a vice president of</p> <p>20 sales.</p> <p>21 Q. Who was that?</p> <p>22 A. Mike Lamboy. He's still with the</p> <p>23 company. We have a VP of finance,</p> <p>24 Floyd Lesti, who is -- retired about a year</p> <p>25 ago.</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Oh, about 50 to 60.</p> <p>2 Q. And you had another title shift</p> <p>3 after 2001?</p> <p>4 A. Yes. In about 2000 -- about</p> <p>5 2005, I was promoted to executive vice</p> <p>6 president.</p> <p>7 Q. And at that point in time, what</p> <p>8 was the management structure? Was your father</p> <p>9 still president?</p> <p>10 A. He was.</p> <p>11 Q. Okay. Was there still a vice</p> <p>12 president of sales?</p> <p>13 A. There was.</p> <p>14 Q. Okay. Was there still a vice</p> <p>15 president of finance?</p> <p>16 A. Yes.</p> <p>17 Q. Any other vice presidents at that</p> <p>18 point in time?</p> <p>19 A. There were two gentlemen that</p> <p>20 were promoted to regional vice presidents at</p> <p>21 the same time I was promoted.</p> <p>22 Q. Who are they?</p> <p>23 A. Roger Parish, who is down in</p> <p>24 Houston, Texas and Brandon Liebhard, who's in</p> <p>25 Reno, Nevada.</p>

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<p style="text-align: right;">Page 89</p> <p>1 A. Sure.</p> <p>2 Q. Take Stock, was that a product</p> <p>3 that you were going to acquire through IBiS</p> <p>4 and Mr. Van Leeuwen, or was that outside of</p> <p>5 what his services were going to be?</p> <p>6 A. That would have been through</p> <p>7 IBiS.</p> <p>8 Q. Besides Take Stock, was there any</p> <p>9 other software you looked at?</p> <p>10 A. Yes, Navision, Prophet 21,</p> <p>11 Computer Insights, I believe a product called</p> <p>12 IST. Those were all looked at at various</p> <p>13 times.</p> <p>14 Q. Navision, was that a product that</p> <p>15 you were going to get through IBiS, or was</p> <p>16 that separate for Mr. --</p> <p>17 A. I think that was separate.</p> <p>18 Q. -- the implementation separate?</p> <p>19 A. I think.</p> <p>20 Q. Did Mr. Van Leeuwen know you were</p> <p>21 looking at Navision?</p> <p>22 A. I believe he did, yes.</p> <p>23 Q. Okay. Prophet 21 would have been</p> <p>24 separate from Mr. Van Leeuwen, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 91</p> <p>1 say we're looking at this and that and the</p> <p>2 other one.</p> <p>3 Q. He wanted to keep your business?</p> <p>4 MR. HULME: Objection, foundation.</p> <p>5 THE WITNESS: I would expect that he</p> <p>6 would.</p> <p>7 BY MR. STAR:</p> <p>8 Q. You -- you had the sense that he</p> <p>9 wanted to keep your business?</p> <p>10 A. I had the sense that, yeah, he</p> <p>11 wanted to keep our business. He saw us as a</p> <p>12 trusted customer and saw the opportunity to</p> <p>13 help us out.</p> <p>14 Q. You mentioned you went to some</p> <p>15 trade shows and -- and saw some of the</p> <p>16 software that way. Did you go to any trade</p> <p>17 show where Business One was discussed?</p> <p>18 A. I was at a trade show where --</p> <p>19 where LSi was representing Business One.</p> <p>20 Q. When was that?</p> <p>21 A. Probably in 2004. It may have</p> <p>22 been '05 or '06, but one of those three.</p> <p>23 Q. Okay.</p> <p>24 A. I believe my father went to some</p> <p>25 kind of trade show where Business One was</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. Did he know you were looking at</p> <p>2 Prophet 21?</p> <p>3 A. I believe so. I can't say with</p> <p>4 certainty.</p> <p>5 Q. You mentioned Computer Insights</p> <p>6 and IST. Are those two separate things, or is</p> <p>7 IST the product from Computer Insights?</p> <p>8 A. I believe they are two separate</p> <p>9 things, two separate companies, two separate</p> <p>10 products.</p> <p>11 Q. Did -- were either of those</p> <p>12 products going to come through Mr. Van Leeuwen</p> <p>13 and IBiS, or were those separate from him?</p> <p>14 A. They were both separate.</p> <p>15 Q. Did he know that you were looking</p> <p>16 at those other two products?</p> <p>17 A. I believe he did.</p> <p>18 Q. What is your basis for saying you</p> <p>19 knew -- that Mr. Van Leeuwen knew you were</p> <p>20 looking at these other products from other</p> <p>21 vendors?</p> <p>22 A. We had open discussions with him</p> <p>23 about, you know, the software we were on and</p> <p>24 the need to move to the next product. And he</p> <p>25 would ask what we're looking at, and we would</p>	<p style="text-align: right;">Page 92</p> <p>1 represented.</p> <p>2 Q. You don't have any specific --</p> <p>3 A. I don't have --</p> <p>4 Q. -- firsthand knowledge of that?</p> <p>5 A. -- any specific firsthand</p> <p>6 knowledge, but it would have probably been in</p> <p>7 2002 or 3.</p> <p>8 Q. Okay. Do you have knowledge of</p> <p>9 what Hodell's hardware and network looked like</p> <p>10 back in -- computer hardware and computer</p> <p>11 network looked like back in 2003?</p> <p>12 A. 2003, yes. I'm not an IT expert,</p> <p>13 I'll make that disclaimer right now, but I</p> <p>14 have a rough knowledge, yes.</p> <p>15 Q. Can you -- can you tell me what</p> <p>16 the basic architecture of the Hodell computer</p> <p>17 hardware and network looked like back in 2003?</p> <p>18 A. 2003, we would have had a FACTS</p> <p>19 server and database for to run the FACTS,</p> <p>20 F-A-C-T-S, software.</p> <p>21 Q. Uh-huh.</p> <p>22 A. We would have had a Radio Beacon</p> <p>23 server, Radio Beacon database, a Radio Beacon</p> <p>24 handheld server. That's the server that runs</p> <p>25 the scanners. We had a Citrix MetaFrame</p>

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1 A. Yes.  
2 Q. -- when the development agreement  
3 was signed, right?  
4 A. Yes.  
5 Q. Okay. Did you personally obtain  
6 any information about the Business One product  
7 from Dan Lowery? Did he give you any  
8 information?  
9 A. Yes.  
10 Q. What information did Dan Lowery  
11 give you specifically about Business One?  
12 A. He gave us information on the --  
13 the number of users that the system could  
14 handle.  
15 Q. When did Mr. Lowery give you  
16 information about the number of users the  
17 system could handle?  
18 A. That would have been early on in  
19 our discussions.  
20 Q. Do you believe --  
21 A. I can't say specifically what  
22 month in 2004, but it would have been in 2004.  
23 Q. It would have been in 2004 prior  
24 to signing the development agreement?  
25 A. Yes.

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1 Q. Do you recall how Mr. Lowery gave  
2 you that information?  
3 A. I believe in conference calls.  
4 Q. Did he give you any of that  
5 information in writing, or was this all over  
6 the telephone?  
7 A. I believe this was over the  
8 telephone and conference calls.  
9 Q. And what specifically do you  
10 recall Mr. Lowery saying in 2004 about the  
11 number of users?  
12 A. I recall -- the number I recall  
13 is 5 to 500 users.  
14 Q. Do you recall Mr. Lowery saying  
15 specifically that Business One could support 5  
16 to 500 users?  
17 A. To the best of my recollection,  
18 yes, 5 to 500. It could have been 300. 5 to  
19 300, or 10 to 300.  
20 Q. Could it have been employees and  
21 not users, or did he specifically --  
22 A. It was users.  
23 Q. He specifically used the word  
24 users?  
25 A. He specifically used the word

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1 users.  
2 Q. Had he said that the software  
3 could support up to 300 employees, would that  
4 have been a nonstarter for Business One in  
5 your view?  
6 A. No, because employees and users  
7 applied the same when it came to the  
8 marketing.  
9 Q. How many employees did you, or  
10 strike that. How many users did you in 2004  
11 expect to have on a new software solution?  
12 A. At least 80. At least 80.  
13 Q. Okay. Did you have any  
14 expectation that you were going to have more  
15 than 80 users back in 2004?  
16 A. In 2004, yes. We knew that we  
17 were growing at a pretty good clip, and we  
18 would need to add users over time as we grew  
19 organically and through acquisition.  
20 Q. How many users in 2004 did you  
21 expect you might have in the future?  
22 A. Up to 300 users.  
23 Q. So if you had information that  
24 the software was for companies with up to 250  
25 employees, yet you had expectations of up to

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1 300 users, would that have made Business One a  
2 nonstarter for you?  
3 A. Up to 250 employees, no.  
4 Wouldn't have made it a nonstarter, because we  
5 would have considered users.  
6 Q. Well, you say you were -- had  
7 expectations of up to 300 users, right?  
8 A. Right, over the useful lifespan  
9 of the product.  
10 Q. If you were aware of information  
11 that said that Business One was suitable for  
12 companies with up to 250 users, would that  
13 have made Business One a nonstarter for you?  
14 A. I don't believe so. I think that  
15 was --  
16 Q. If you were aware of information  
17 that Business One was good for up to 100  
18 users, would that have made it a non -- would  
19 that have made Business One a nonstarter for  
20 you?  
21 A. In 2004?  
22 Q. Yes.  
23 A. Yes. If -- if it was represented  
24 as capable of 100, up to 100 users, that would  
25 have been an issue in 2004.



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1 Q. In fact, if you had information  
2 that said it's good for up to 100 users, you  
3 wouldn't have acquired the software, right?  
4 A. I don't believe so.  
5 Q. You -- and you wouldn't have  
6 acquired it, because you had at least 80 users  
7 to begin with, right?  
8 A. Right.  
9 Q. And you were expecting to go up  
10 to about 300 users, correct?  
11 A. Over the useful lifespan of the  
12 product, which was roughly ten years.  
13 MR. STAR: You need a break?  
14 MR. LAMBERT: I'm good for awhile.  
15 BY MR. STAR:  
16 Q. In 2004, when you were looking at  
17 new software before you had to make a decision  
18 to enter into an agreement with the  
19 development agreement that we see, did you  
20 have specific selection criteria from your  
21 software?  
22 A. It had to be scaleable, it had to  
23 have an integrated warehouse management  
24 system, either through the same provider or  
25 through a certified integration. Had to give

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1 us the type of database that we were looking  
2 for. I think it's called relational database.  
3 Q. Uh-huh.  
4 A. We preferred a sequel database,  
5 because it was very friendly for analysis and  
6 reporting. It had to meet certain  
7 functionality with regards to pack sizes for  
8 products, secondary processing, bills and  
9 materials.  
10 Q. Anything else?  
11 A. Those would be the major ones  
12 that I can think of.  
13 Q. Were these criteria written down  
14 anywhere?  
15 A. Probably not.  
16 Q. And you did not use an outside  
17 third-party vendor to help you with the  
18 selection process, or to develop these  
19 criteria, correct?  
20 A. Correct.  
21 Q. You did that just yourself and  
22 your father, and reporting your thoughts or  
23 your decisions to your brother Dan to  
24 Bill Rex, correct?  
25 A. Correct.

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1 Q. You were relying on outside  
2 people like Mr. Van Leeuwen to provide you  
3 with information, right?  
4 MR. HULME: Objection, form and  
5 foundation.  
6 THE WITNESS: We were relying on  
7 Mr. Van Leeuwen, Prophet 21, Navision, IST, to  
8 provide information.  
9 BY MR. STAR:  
10 Q. When you were -- you mentioned  
11 you were getting information from both  
12 Mr. Van Leeuwen and Mr. Lowery in 2004 about  
13 Business One. When you were getting that  
14 information, did you have any understanding as  
15 to whether either Mr. Van Leeuwen or  
16 Mr. Lowery, or their organizations, were  
17 actually part of what is called the SAP  
18 Channel Partner Program?  
19 A. Um, yes.  
20 Q. What did you understand?  
21 A. We understood that IBiS had  
22 joined the partner program in 2003, and that  
23 LSi had subsequently joined that program.  
24 Q. So when you're having  
25 conversations with Mr. Lowery, for instance,

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1 in 2004, prior to signing the development  
2 agreement in December of that year, were you  
3 under the understanding that his organization,  
4 LSi, was actually a Business One reseller?  
5 A. We were of the understanding that  
6 they were a business partner of -- of SAP,  
7 yes.  
8 Q. And what -- what, if anything,  
9 led you to that understanding?  
10 A. Multiple discussions we had.  
11 They were using SAP's logo on the letterhead  
12 and the proposal.  
13 Q. Who was?  
14 A. LSi.  
15 Q. Okay.  
16 A. And --  
17 Q. Do you know --  
18 A. I believe they would --  
19 Q. Sorry.  
20 A. -- they would need authorization  
21 to do so.  
22 Q. Do you have an actual  
23 understanding as to when LSi became an SAP  
24 channel partner?  
25 A. I don't. I would say sometime in

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1 I think your answer was that you didn't recall  
2 doing that?  
3 A. Correct.  
4 Q. Okay. Do you know if anybody  
5 else from Hodell made a visit to a company  
6 that was running Business One prior to  
7 December of 2004?  
8 A. I don't recall.  
9 Q. The decision to actually go  
10 forward with an acquisition of Business One,  
11 that was a decision made sometime in 2004,  
12 correct?  
13 A. Yes.  
14 Q. In connection with that decision  
15 to go forward with Business One, did Hodell  
16 perform any kind of business case or -- or ROI  
17 analysis?  
18 A. I believe there was an ROI  
19 analysis done by my father. I can't speak for  
20 him specifically, but I believe there was.  
21 Q. Do you have a specific  
22 recollection of seeing that document?  
23 A. I don't have a specific  
24 recollection.  
25 Q. Do you have any recollection of

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1 analysis that was done specifically for or by  
2 Hodell concerning its purchase of Business  
3 One?  
4 A. Again, I -- I believe it was  
5 done. That's the best of my recollection.  
6 Q. I asked you about the criteria,  
7 one of the -- that you had for going onto a  
8 new software platform. One of them was  
9 scalability. What did you mean by  
10 scalability?  
11 A. The software would have to grow  
12 with our business.  
13 Q. What did that mean for you to --  
14 A. So --  
15 Q. Sorry, go ahead.  
16 A. -- in terms of number of users,  
17 number of item records, number of customer  
18 records, number of vendor records, so the --  
19 it would have to be scaleable based on the  
20 number of users, first and foremost, but also  
21 the size of the database. It would have to be  
22 able to grow with our business at least over a  
23 ten-year period. And that was represented to  
24 us by LSi and IBiS.  
25 Q. In 2004?

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1 -- of personally playing any part in preparing  
2 the -- the ROI analysis?  
3 A. No, but I believe at one point  
4 there was an ROI document, SAP ROI document  
5 that came into play in that.  
6 Q. Do you know when that was?  
7 A. My guess is it would have been in  
8 2004.  
9 Q. Do you know where we could find  
10 that today, if anywhere?  
11 A. The SAP document, I think, has  
12 been produced.  
13 Q. And does it have a particular  
14 title?  
15 A. I think it's like ROI calculator  
16 or something like that. I don't know -- I  
17 don't know if we produced that, or LSi or SAP,  
18 or what. I remember seeing that. But my  
19 guess is that -- because that may have come  
20 into play during that, but I don't want to  
21 speak for my father on his -- on ROI  
22 calculations that he would have done.  
23 Q. Okay. I'm just trying to find  
24 out though if you have any personal knowledge  
25 of a business case or return on investment

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1 A. Yeah, 2004 many times, yes. From  
2 SAP through IBiS and LSi.  
3 Q. And so I have this right, the  
4 scalability as it pertains to the number of  
5 users, you expected initially to have 80  
6 users, and then to grow to somewhere around  
7 300 during the ten-year period that would be  
8 the useful life of the software?  
9 A. That was an estimate of 300, yes.  
10 Q. And as far as the size of the  
11 database, number of records, et cetera, what  
12 did you expect to need as far as scalability  
13 in that perspective?  
14 A. Well, our -- our database size  
15 had grown since I had first come on board in  
16 '99, in terms of number of customers, number  
17 of vendors, number of items, so that database,  
18 not the -- not the database, the software  
19 system had to scale appropriately and had to  
20 be able to manage that size of a database.  
21 Q. Concerning the number of users  
22 specifically, what did you do, if anything, to  
23 confirm the information that you had received  
24 from Van Leeuwen and Lowery?  
25 A. The information that we received



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<p style="text-align: right;">Page 129</p> <p>1 correct?</p> <p>2 A. I wouldn't call it a beta site.</p> <p>3 Q. Why not?</p> <p>4 A. Because they were building the</p> <p>5 same functionality into a -- into a new</p> <p>6 software.</p> <p>7 Q. But they hadn't actually built</p> <p>8 that yet, right?</p> <p>9 A. Correct.</p> <p>10 Q. You were going to be the very</p> <p>11 first customer to actually run this new</p> <p>12 In-Flight program along with Business One,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. And -- and you also needed</p> <p>16 additional functionality that In-Flight wasn't</p> <p>17 going to have, correct?</p> <p>18 A. Say that again.</p> <p>19 Q. Well, sure. You also needed to</p> <p>20 have functionality that was available through</p> <p>21 Radio Beacon, right?</p> <p>22 A. Correct.</p> <p>23 Q. What was the functionality that</p> <p>24 Radio Beacon had that you needed, that you</p> <p>25 couldn't get either through Business One or</p>	<p style="text-align: right;">Page 131</p> <p>1 A. It's a long time ago. We may</p> <p>2 have.</p> <p>3 Q. But you don't -- just so we're</p> <p>4 clear. You don't have a specific recollection</p> <p>5 of getting information from Mr. Elliott, or</p> <p>6 anybody else at Radio Beacon, before you</p> <p>7 entered into the development agreement in</p> <p>8 December of 2004, right?</p> <p>9 A. I don't have any specific</p> <p>10 recollection.</p> <p>11 Q. I asked you earlier about your --</p> <p>12 your business process with respect to sales</p> <p>13 orders in 2003. Was that substantially the</p> <p>14 same in 2004 as it had been in 2003, you were</p> <p>15 still running the FACTS software?</p> <p>16 A. I believe so.</p> <p>17 Q. Okay. At what point did you stop</p> <p>18 running the FACTS software and go on to a new</p> <p>19 platform?</p> <p>20 A. The day before we went live on</p> <p>21 Business One.</p> <p>22 Q. So that would have been March 7th</p> <p>23 of 2007; is that right?</p> <p>24 A. What date did we go live? I</p> <p>25 don't --</p>
<p style="text-align: right;">Page 130</p> <p>1 through the In-Flight development?</p> <p>2 A. The warehouse management system,</p> <p>3 the wireless scanning.</p> <p>4 Q. Did you have any understanding as</p> <p>5 to whether the Radio Beacon program, with that</p> <p>6 functionality, had been running in another</p> <p>7 location along with the Business One program?</p> <p>8 A. Yes. I believe Dale and Dan had</p> <p>9 -- had represented that that integration had</p> <p>10 already been built.</p> <p>11 Q. Did you check that with Radio</p> <p>12 Beacon?</p> <p>13 A. I don't recall if we did or not.</p> <p>14 Q. Did you go to any customer that</p> <p>15 was running Business One with Radio Beacon to</p> <p>16 make sure that that actually worked?</p> <p>17 A. I don't think we did.</p> <p>18 Q. So you relied just on information</p> <p>19 you got from Lowery and Van Leeuwen, correct?</p> <p>20 A. We may have been given</p> <p>21 information by Radio Beacon, Ross Elliott as</p> <p>22 well.</p> <p>23 Q. Do you recall or you're</p> <p>24 speculating that you might have gotten</p> <p>25 information?</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. I think you went live March 8,</p> <p>2 2007.</p> <p>3 A. Is it March 8th or March 2nd?</p> <p>4 Q. I thought it was the 8th. Well,</p> <p>5 it was up --</p> <p>6 A. It was the day before.</p> <p>7 Q. Okay. So it was up until</p> <p>8 sometime in early March 2007, right?</p> <p>9 A. Yes.</p> <p>10 Q. Was the way that you were putting</p> <p>11 in sales orders the same as of that time in</p> <p>12 March 2007, as it had been back in 2003 and</p> <p>13 2004?</p> <p>14 A. For the most part. Over that</p> <p>15 time, email had grown a little bit, but we</p> <p>16 still had a lot of call-in type orders, so</p> <p>17 yes, we were typing them in.</p> <p>18 Q. You mentioned that when you were</p> <p>19 looking at new software, you were -- you were</p> <p>20 willing to change your processes to match</p> <p>21 functionality that might be in the software,</p> <p>22 if it was a better way of doing business. Did</p> <p>23 you engage in any kind of analysis of whether</p> <p>24 you should make changes in your business</p> <p>25 processes when you went to the new software?</p>

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1 A. The functionality in In-Flight  
2 Enterprise.  
3 Q. Which was?  
4 A. The --  
5 Q. I'm sorry, go ahead.  
6 A. The functionality of In-Flight  
7 Enterprise, the fact that Radio Beacon had  
8 already had an integration built and working.  
9 That was the main components.  
10 Q. As of December 2004, is it fair  
11 to say you had no confidence in the Radio  
12 Beacon product?  
13 MR. LAMBERT: Objection.  
14 THE WITNESS: It's not.  
15 BY MR. STAR:  
16 Q. Why not?  
17 A. The Radio Beacon product was  
18 robust. It was a good tool, and I held --  
19 held that feeling throughout while we were  
20 using it, even though, as you're going to show  
21 me emails, at times I said this product is, or  
22 this integration isn't working for us, or this  
23 Radio Beacon solution isn't working for us.  
24 It was, again, as I stated earlier, it was  
25 that integration with the FACTS product that I

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1 believe was the problem. Radio Beacon itself  
2 was a robust tool, and that integration had  
3 already been built with SAP Business One.  
4 Q. At any point in time, did Radio  
5 Beacon function as you expected it would for  
6 Hodell?  
7 MR. LAMBERT: Objection. You talking  
8 about with FACTS or --  
9 MR. STAR: At any point in time.  
10 MR. LAMBERT: -- an earlier --  
11 THE WITNESS: Okay. I believe late in  
12 the time period that we had -- we were on  
13 Business One, it was working, probably not at  
14 a hundred percent, but pretty good. Of the --  
15 of the components that we had, that seemed to  
16 be working pretty good.  
17 BY MR. STAR:  
18 Q. And when was this?  
19 A. It would have been late in -- in  
20 the cycle.  
21 Q. This is 2007, 2008?  
22 A. I would say late 2007, maybe --  
23 maybe 2008, to the best of my recollection.  
24 Q. So as of March of 2007, Hodell  
25 started to run its business on the Business

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1 One software with In-Flight and Radio Beacon,  
2 correct?  
3 A. Correct.  
4 Q. How long did Hodell run its  
5 business on that software platform?  
6 A. We ran it until, I want to say  
7 around March 30th of 2009.  
8 Q. And at that point, you went over  
9 to the Prophet 21 software?  
10 A. Yes.  
11 Q. So you ran Business One  
12 effectively for -- well, strike that. You ran  
13 the Business One solution with Radio Beacon  
14 and In-Flight add-ons for two years?  
15 A. Yes, but not effectively.  
16 Q. I asked you earlier about the --  
17 off the record.  
18 (Whereupon, an off-the-record  
19 discussion was held at 5:24.)  
20 MR. STAR: Back on.  
21 BY MR. STAR:  
22 Q. So you ran the -- the Business  
23 One software for a two-year period?  
24 A. Yes, approximately.  
25 Q. I asked you earlier about the

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1 business functions in general that -- the  
2 business processes that Hodell was able to run  
3 on the FACTS software up through March of  
4 2007, when it switched to Business One. Now  
5 with respect to the Business One software with  
6 the In-Flight, Radio Beacon add-ons, can you  
7 give me an overview of what business  
8 processes, what aspects of Hodell's business  
9 were actually operating using the SAP Business  
10 One software with In-Flight and Radio Beacon?  
11 A. What processes were operating?  
12 Q. Uh-huh.  
13 A. What do you mean by operating?  
14 Q. Well, I asked you what you were  
15 -- how you -- you were using FACTS, and you  
16 told me you were using it for your sales  
17 processes, your order taking, your inventory,  
18 your accounting, finances, and that you were  
19 doing your warehouse management on FACTS  
20 without wireless scanners, which you then  
21 added with Radio Beacon, right?  
22 A. (Witness nods head.)  
23 Q. I'm -- I'm asking you in that  
24 same vein what were you doing, what business  
25 functions were you -- were you running using

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1 specifically.  
2 A. I --  
3 Q. If you have an estimate, you can  
4 give me that.  
5 A. I don't know, but I -- I would  
6 estimate between 100 and 150 thin clients or  
7 PCs.  
8 (Whereupon, at 9:20, there was a knock  
9 at the door.)  
10 THE WITNESS: PCs could operate as thin  
11 clients. They could deliver the desktop just  
12 like a thin client could.  
13 BY MR. STAR:  
14 Q. All right. As of the end of  
15 2004, do you know how many licenses Hodell had  
16 with FACTS software?  
17 A. End of 2004?  
18 Q. Yeah.  
19 A. I don't specifically.  
20 Q. Let me show you what we  
21 previously marked as Exhibit 24. These are  
22 Hodell consolidated financial statements from  
23 2002 through the end of 2000 -- through March  
24 of 2009. If you look at the statement for  
25 2004, which is Hodell 32393.

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1 A. Okay.  
2 Q. It shows a total employee  
3 population as of December 2004 of 160 people.  
4 Do you see that?  
5 A. Yes.  
6 Q. As of the end of 2004, do you  
7 know whether Hodell had 160 licenses for  
8 FACTS?  
9 A. I do not. I don't believe we  
10 would have had 160 licenses.  
11 Q. You would have had something less  
12 than that?  
13 A. We would have had something less  
14 than that. Maybe 100, if I had to guess.  
15 Q. Why would you have --  
16 A. Maybe.  
17 Q. -- only around 100 FACTS  
18 licenses, if you had 160 employees?  
19 A. Because we had some users in the  
20 warehouse that -- that would repack and  
21 wouldn't use the computer.  
22 Q. So the number of employees and  
23 the number of users at Hodell at the end of  
24 2004 were two different things, right?  
25 A. Number of -- to the best of my

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1 recollection.  
2 Q. Go to the next page. It's the  
3 balance -- it's the consolidated statement  
4 from 2005. And it shows as of -- it's a  
5 little bit difficult to read, but it shows as  
6 of December 2005, the total population of 168  
7 employees. At the end of 2005, you were still  
8 running the FACTS software, right?  
9 A. Right.  
10 Q. How many licenses did you have  
11 for the FACTS software as of the end of 2005?  
12 A. Again, I -- I would speculate  
13 100, 80. I don't know.  
14 Q. So 80 to 100 licenses for FACTS  
15 at the end of 2005?  
16 A. I would speculate. It --  
17 specifically say, I don't know. I would  
18 speculate.  
19 Q. You're not sure exactly, I  
20 understand that, but you're sure that you had  
21 more employees than you had users on the FACTS  
22 system at the end of 2005, correct?  
23 A. I believe so.  
24 Q. If you go to the next page, it's  
25 2006. It shows at the end of 2006, a total

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1 employee population of 180. Do you see that?  
2 A. Yes.  
3 Q. Do you know how many of those 180  
4 employees were actually users of the FACTS  
5 system at the end of 2006?  
6 A. I don't.  
7 Q. It was something less than 180?  
8 A. I believe so.  
9 Q. Was it less than 100?  
10 A. I don't know.  
11 Q. Was it more than a 100?  
12 A. I don't know. Is there -- do we  
13 have a document that shows the number of users  
14 in FACTS?  
15 Q. Not that I'm aware of.  
16 A. I'm not aware of one either.  
17 Q. Okay. And at the -- as of the  
18 end of 2006, you were running your business  
19 using the FACTS software, correct?  
20 A. That's correct.  
21 Q. You hadn't yet gone live on the  
22 SAP solution, correct?  
23 A. Correct.  
24 Q. So based on this testimony, is it  
25 your understanding that the number of



<p style="text-align: right;">Page 253</p> <p>1 Q. Okay. Did you review this 2 document with anybody else at Hodell? 3 A. I believe briefly with Otto. 4 Q. Did you read the whole thing 5 before you signed it? 6 A. Yes. 7 Q. Did it give you any concern when 8 you read the -- the entire document before you 9 signed it? 10 A. It appeared to be pretty standard 11 software licensing stuff, where no one's 12 accountable for anything. 13 Q. And you understood when you read 14 it in December of 2005 that this was pretty 15 standard software licensing language, correct? 16 A. From my recollection. 17 Q. Okay. Did you wonder at the time 18 why you hadn't seen a document, or been asked 19 to sign a document like this back in December 20 of 2004? 21 A. I don't recall. I -- I just know 22 that for the -- for the release of those 40 23 licenses, this had to be signed. 24 Q. Back in December of 2004, and 25 before signing this agreement, and the license</p>	<p style="text-align: right;">Page 255</p> <p>1 license agreement. 2 A. Okay. 3 Q. You signed it December 23, 2005, 4 correct? 5 A. Correct. 6 Q. Is that your handwriting on the 7 front, where you fill in the date, and the 8 name of your company and the address? 9 A. Yes. 10 Q. You see under the definition 11 section, for instance, in 1.7, it spells out 12 the details of what's proprietary information? 13 Do you see that? 14 MR. LAMBERT: Objection. 15 THE WITNESS: 1.7? 16 BY MR. STAR: 17 Q. Yes. 18 A. Yeah. It -- just give me a 19 minute to read it, if you can. (Doing as 20 indicated.) Yes. 21 Q. No language like that appears 22 anywhere in the development agreement, does 23 it? 24 A. I don't believe so. 25 Q. You see Section 2 of the license</p>
<p style="text-align: right;">Page 254</p> <p>1 agreement in December of 2005, did you have 2 any expectation that Hodell actually had the 3 legal right to use any of SAP's software? 4 MR. LAMBERT: I'll object. Form. 5 THE WITNESS: Yes, I believe we had the 6 right to use their software, because we had 7 purchased 80 licenses in 2004. 8 BY MR. STAR: 9 Q. What is your basis besides -- 10 well, strike that. 11 What is your basis for saying that 12 before signing this license agreement in 13 December of 2005, Hodell had the right to use 14 SAP's software? 15 A. Well, we -- 16 MR. LAMBERT: Objection. 17 THE WITNESS: -- we purchased 80 18 licenses from their business partner. 19 BY MR. STAR: 20 Q. Through the development 21 agreement? 22 A. Through the development 23 agreement, which specified 80 SAP Business One 24 licenses. 25 Q. Let's -- let's look at the</p>	<p style="text-align: right;">Page 256</p> <p>1 agreement is titled License Grant? You agree 2 with me that no language like that is found 3 anywhere in the development agreement? 4 A. I don't believe so. 5 MR. LAMBERT: Objection. 6 BY MR. STAR: 7 Q. You don't believe it's found in 8 the development agreement? 9 A. I don't believe it's found in the 10 development agreement. 11 Q. Section 6 of the agreement is 12 titled Proprietary Rights. You agree with me 13 that there is no language like that found in 14 the development agreement? 15 MR. LAMBERT: Objection, form. 16 THE WITNESS: I don't believe so. 17 BY MR. STAR: 18 Q. You don't believe that language 19 is in the development agreement? 20 A. Well, I can look back. I don't 21 -- I don't believe it's in the development 22 agreement. 23 Q. Those sections that we just 24 looked at, they're a part of what you, back in 25 December of 2005, considered to be pretty</p>

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1 the testing, whether it's off site or on site.  
 2 Q. Do you believe that Hodell had  
 3 any specific role or responsibility with  
 4 respect to testing before go live?  
 5 MR. LAMBERT: Objection.  
 6 THE WITNESS: I believe that in  
 7 conjunction with LSi, we -- we did have a role  
 8 of testing the system.  
 9 BY MR. STAR:  
 10 Q. What -- what testing did you  
 11 understand needed to be done before go live?  
 12 A. Well, there was lots of different  
 13 testing. I mean, generally speaking, LSi had  
 14 a lot of testing to do of their -- their  
 15 product and how the interface worked. There  
 16 was stress testing, and then there was, you  
 17 know, testing the system to make sure everyone  
 18 can do their tasks.  
 19 Q. Would you agree that at some  
 20 point the plan was, whether it was Hodell by  
 21 itself or in connection with LSi, at some  
 22 point before the go live, there was a -- a  
 23 plan in place to actually put users on the  
 24 system as it would look at the time of go  
 25 live?

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1 A. Yes.  
 2 Q. What was that plan?  
 3 A. The plan was to get as many -- as  
 4 many users as we could on the system to test  
 5 -- test its capabilities, and its -- I think  
 6 we called it stress testing.  
 7 Q. Who came up with that plan?  
 8 A. I don't recall. It may -- it was  
 9 probably LSi and us combined.  
 10 Q. At LSi, was that Marcia Weissman,  
 11 or was it somebody else that had came up with  
 12 that plan?  
 13 A. May have been Marcia, may have  
 14 been Jon.  
 15 Q. Jon Woodrum?  
 16 A. Right.  
 17 Q. Did you receive any direction  
 18 from LSi as to how you were supposed to run  
 19 stress testing?  
 20 A. I -- I believe they helped us  
 21 coordinate how that should be done.  
 22 Q. What was your understanding of  
 23 what exactly should be done to stress test the  
 24 system before go live?  
 25 A. Generally speaking, we would get

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1 users on the system, doing their jobs in the  
 2 computer system, and simulate an hour or two  
 3 of using the system.  
 4 Q. To your recollection, did Hodell  
 5 ever get all of its users on the system at one  
 6 time to stress test it before go live?  
 7 A. Yes, a few times.  
 8 Q. When did that occur?  
 9 A. I believe in January -- when did  
 10 we go live?  
 11 Q. Testimony has been sometime in  
 12 the first or early second week of March,  
 13 sometime around March 8th, I think.  
 14 A. I ask, because I get confused  
 15 between the P21 and SAP. Okay. So it would  
 16 have been January, February and perhaps early  
 17 March.  
 18 Q. It's January --  
 19 A. Of 2007.  
 20 Q. Okay. So you believe that  
 21 throughout that period, or three particular  
 22 dates in January and February or March you did  
 23 the stress testing?  
 24 A. I -- I believe throughout that  
 25 period we did a number of stress tests. I

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1 can't tell you specifically how many.  
 2 Q. How many users got on the system  
 3 during the stress tests?  
 4 A. I can't tell you that. I don't  
 5 have that data. I know that I repeatedly sent  
 6 out emails to all users and our general  
 7 managers, instructing everyone to get on the  
 8 system for, you know, this set period of time.  
 9 Q. Do you know if that in fact  
 10 happened?  
 11 A. I believe so.  
 12 Q. What makes you believe that that  
 13 happened? What is your basis for that?  
 14 A. Because I believe our general  
 15 managers were coordinating the stress testing  
 16 at their facilities and would confirm that  
 17 they had users on the system.  
 18 Q. How many facilities did you have  
 19 at this time in January of 2007?  
 20 A. I think we had seven.  
 21 Q. Were employees in all seven  
 22 facilities supposed to log on to the SAP  
 23 system to stress test it at the same exact  
 24 time?  
 25 A. Yes. We would have scheduled



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1 time periods.  
2 Q. What time periods were those?  
3 Were those in the morning, before work  
4 started, were they in the afternoon?  
5 A. That's a very detailed question.  
6 I think there was emails that I sent out. If  
7 you could produce those, I would be willing to  
8 discuss that.  
9 Q. When these stress tests happened,  
10 were you on the system yourself?  
11 A. At times I was. I can't tell you  
12 that I was on for every stress testing.  
13 Q. Did you set parameters for the  
14 types of transactions that people should enter  
15 during the stress test periods?  
16 A. I believe we -- we told them do  
17 your normal job. For instance, what you did  
18 the last two hours, repeat the next two hours  
19 type of thing.  
20 Q. And it's your belief that they  
21 actually did that kind of testing, right?  
22 A. I believe so.  
23 Q. Okay. Marcia Weissman testified  
24 to the effect that after the go live happened,  
25 she was told by people at Hodell, including

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1 yourself, that the stress testing did not  
2 actually happen in the way that you have  
3 described. Do you disagree with her testimony  
4 at all --  
5 MR. HULME: Objection, form --  
6 BY MR. STAR:  
7 Q. -- to that effect?  
8 MR. HULME: -- and foundation.  
9 MR. LAMBERT: Same objection.  
10 THE WITNESS: I believe we tested the  
11 system numerous times with as many users as we  
12 can get on the system.  
13 BY MR. STAR:  
14 Q. And when you tested -- and -- and  
15 let me step back. How many users could you  
16 get on the system during the testing?  
17 A. Well, we had 120 licenses. I  
18 don't -- I don't recall specifically, but I  
19 know that we could get up to 120.  
20 Q. Well, do you know if at any time  
21 during the stress testing that you did you had  
22 120 people on the system at the same exact  
23 time?  
24 A. I don't specifically know that.  
25 Q. Do you know whether during any of

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1 the stress testing that you did, you had 100  
2 users on the system at the exact same time?  
3 A. I don't know that. I would -- I  
4 would venture to say we had somewhere between  
5 80 and 100.  
6 Q. What makes you say that?  
7 A. Because I think that's roughly  
8 the number we had -- the number of people we  
9 had using the system at the time.  
10 Q. So it's your belief, as we sit  
11 here today, that during this stress testing,  
12 Hodell actually put somewhere between 80 and  
13 100 users on the SAP system at the same exact  
14 time, running the kinds of transactions that  
15 they would normally do during the day?  
16 A. To the best of my recollection.  
17 Q. What did you find during that  
18 stress testing, as far as the performance of  
19 the solution?  
20 A. Well, initial -- the initial  
21 tests didn't go well. There was --  
22 immediately we saw system lockups and system  
23 freezes and very slow performance.  
24 Q. When was that?  
25 A. I don't know specifically. It

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1 would have been the end of 2006, or -- let me  
2 restate that. It would have been late 2000  
3 and -- late December 2006, or early  
4 January 2006, to the best of my -- 2007, to  
5 the best of my recollection.  
6 Q. Did those problems, in your  
7 opinion, get rectified completely before you  
8 actually went live?  
9 A. I believe many of them were  
10 addressed and improved upon.  
11 Q. What was the final stress test?  
12 Strike that. Do you know when the final  
13 stress test took place before go live?  
14 A. I do not.  
15 Q. Do you know what the status was  
16 of the performance of the system during the  
17 final test, stress test, before go live?  
18 A. I know that it had improved  
19 significantly since the initial stress tests.  
20 Q. Were there still performance  
21 issues that you saw?  
22 A. I don't recall. But I -- if you  
23 have documents, I'm sure we can review them.  
24 Q. This is a document previously  
25 marked as Exhibit 144. These are emails from

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1 November 14, 2006. The first one is an email  
2 from Keith Winn to Avery Myrick. Do you see  
3 that?  
4 A. Yes.  
5 Q. Okay. Keith writes -- and Keith  
6 was employed by Hodell at that time?  
7 A. Yes.  
8 Q. He was the IT manager for Hodell  
9 at that point?  
10 A. No.  
11 Q. What was his job?  
12 A. Network administrator. He was  
13 handling various components of IT.  
14 Q. Okay. He writes here, in the  
15 second paragraph, Kevin and I did a little  
16 test running SAP without In-Flight. SAP ran  
17 very nicely. We installed In-Flight, and SAP  
18 began to crawl. Do you see that?  
19 A. Yes.  
20 Q. Is he referring to you or Kevin  
21 Evanoski, do you know?  
22 A. I do not recall.  
23 Q. Okay. Do you recall back in  
24 November of 2006 running a test like that  
25 described here by Mr. Winn, where you ran SAP

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1 and Radio Beacon add-ons?  
2 A. I do not recall.  
3 Q. Just looking back at this  
4 document, you don't know the details of the  
5 tests that Mr. Winn ran, do you?  
6 A. No.  
7 Q. You don't know if he ran just two  
8 users on the system?  
9 A. I would assume that two users  
10 were running the system.  
11 Q. You don't know that for sure  
12 though, correct?  
13 A. I -- based on his sentence saying  
14 Kevin and I did a little test, a little -- you  
15 know, Kevin -- first of all, Kevin and I, that  
16 means two people, and a little test means not  
17 a big test.  
18 Q. Well, was -- was it you that ran  
19 this test with Mr. Winn?  
20 A. Again, I don't know if it was  
21 Kevin Evanoski or I. If -- I don't know when  
22 Kevin -- I think I testified I wasn't sure  
23 when Kevin Evanoski left -- left. I believe  
24 Kevin was gone by then, so it would have been  
25 myself.

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1 by itself without In-Flight?  
2 A. I don't recall.  
3 Q. Do you have any reason to  
4 disagree with Mr. Winn's statement that when  
5 he ran this little test, running SAP without  
6 In-Flight, that SAP ran very nicely? Any  
7 reason to disagree with that?  
8 A. No, but it -- two people on the  
9 system doesn't do anything.  
10 Q. Where do you get that there were  
11 only two people on the system?  
12 A. Well, he says Kevin and I did a  
13 little test running SAP.  
14 Q. What does that mean to you?  
15 A. That implies Kevin and I. It  
16 implies two people.  
17 Q. Okay. But you have no knowledge  
18 as to whether this was part of the actual  
19 stress testing or additional users were put on  
20 the system?  
21 A. I don't believe this was part of  
22 the stress testing, no.  
23 Q. Did -- to your knowledge, did  
24 Hodell ever run a stress test with just the  
25 SAP software running, without the In-Flight

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1 Q. So you don't have any personal  
2 knowledge as to whether Mr. Winn's test was  
3 just with two users, or whether it involved  
4 more than two users, correct?  
5 A. Again, I'm going to say I believe  
6 it involved two users.  
7 Q. You're just extrapolating off  
8 this document, but you don't have actual  
9 personal knowledge of what Mr. Winn did, do  
10 you?  
11 MR. LAMBERT: Then why are you asking  
12 him about it? I mean --  
13 MR. STAR: Because I want him -- I want  
14 him to answer the question, that's why.  
15 MR. LAMBERT: He's answering you to the  
16 best of his knowledge.  
17 THE WITNESS: I'm answering you to the  
18 best of my knowledge.  
19 MR. STAR: Well, he -- he -- don't  
20 answer for him.  
21 BY MR. STAR:  
22 Q. You don't have any direct  
23 personal knowledge of the test that Mr. Winn  
24 did, correct?  
25 A. No. I -- I -- I'm reading this

<p style="text-align: right;">Page 405</p> <p>1 the order?</p> <p>2 A. At the time of shipment.</p> <p>3 Q. During the time that you were on</p> <p>4 Business One, March '07 to March '09, were</p> <p>5 there inventory shortages that Hodell</p> <p>6 experienced?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. Can you explain what those were?</p> <p>9 A. Lost product.</p> <p>10 Q. What do you mean by that?</p> <p>11 A. Product that was lost that wasn't</p> <p>12 being accurate, locations weren't being</p> <p>13 accurately reflected in the system.</p> <p>14 Q. So you actually had products in</p> <p>15 your warehouse, but you just couldn't find</p> <p>16 them?</p> <p>17 A. Right. We certainly had issues</p> <p>18 with inventory processing and the costing of</p> <p>19 that, as we had discussed earlier.</p> <p>20 Q. Were you actually unable to</p> <p>21 fulfill any orders because of any problems you</p> <p>22 were having with your inventory during</p> <p>23 March 2007 through March 2009?</p> <p>24 A. I believe so. And if you ask me</p> <p>25 for a specific incident, I -- I personally</p>	<p style="text-align: right;">Page 407</p> <p>1 Q. Are you familiar with the term</p> <p>2 fill rate?</p> <p>3 A. Yes.</p> <p>4 Q. What does that mean to you?</p> <p>5 A. Fill rate of our orders. If on</p> <p>6 the first shipment, what percentage of that</p> <p>7 order shipped complete.</p> <p>8 Q. Does that also have to do with</p> <p>9 whether you've actually completely filled an</p> <p>10 order that was -- that was taken and were able</p> <p>11 to satisfy the order, or does it only refer to</p> <p>12 the initial shipment, and whether that had</p> <p>13 100 percent of what was ordered?</p> <p>14 A. What I'm referring to is line</p> <p>15 item fill rate, so if it was a 100-line order,</p> <p>16 and we shipped 95 lines, it would be a 95</p> <p>17 percent fill rate.</p> <p>18 Q. Okay. And that -- that</p> <p>19 additional 5 percent, five line items might</p> <p>20 ship at a later date?</p> <p>21 A. Yeah. That would be a backorder.</p> <p>22 Q. Okay. Did Hodell experience any</p> <p>23 issues with collections during the period of</p> <p>24 2002 through March 2007? Was that an issue</p> <p>25 for Hodell?</p>
<p style="text-align: right;">Page 406</p> <p>1 can't give you that specific incident. There</p> <p>2 may be others within our organization that</p> <p>3 could.</p> <p>4 Q. Who within the organization would</p> <p>5 be able to give that information?</p> <p>6 A. Possibly our general managers,</p> <p>7 possibly our sales employees.</p> <p>8 Q. They haven't provided that</p> <p>9 information to you though, correct?</p> <p>10 A. Not that I know of. Can we take</p> <p>11 a quick break?</p> <p>12 Q. Yeah.</p> <p>13 (Whereupon, a break was taken from 3:35</p> <p>14 until 3:44.)</p> <p>15 BY MR. STAR:</p> <p>16 Q. Between 2002 and 2009, did Hodell</p> <p>17 have any turnover at its management or</p> <p>18 operations level, for instance, its warehouse</p> <p>19 managers?</p> <p>20 MR. HULME: Objection, form.</p> <p>21 THE WITNESS: Between 2002 and 2009?</p> <p>22 BY MR. STAR:</p> <p>23 Q. Yeah, if you know.</p> <p>24 A. I don't believe we had any</p> <p>25 turnover at that level.</p>	<p style="text-align: right;">Page 408</p> <p>1 A. Collections can always be an</p> <p>2 issue with customers, depending on whether</p> <p>3 you're getting payments from them or not.</p> <p>4 2002 to 2007, I don't recall any major</p> <p>5 collections issues. There may have been a few</p> <p>6 bankruptcies with customers, that sort of</p> <p>7 thing.</p> <p>8 Q. From March 2007 through</p> <p>9 March 2009, did Hodell experience any kind of</p> <p>10 new or different issues with respect to</p> <p>11 collections for its customers?</p> <p>12 A. I believe we did. I believe we</p> <p>13 had issues with customers not receiving</p> <p>14 invoices, and so we would see that they're</p> <p>15 45 days past due, and make a call, and only to</p> <p>16 find out that they had never received the</p> <p>17 invoice, that type of thing.</p> <p>18 Q. Did Hodell have to issue any</p> <p>19 credit memos to customers during the period of</p> <p>20 March 2009 through -- March 2007 through</p> <p>21 March 2009?</p> <p>22 A. Yes. Credit memos, we -- they</p> <p>23 are always a component of our business.</p> <p>24 Q. And where on, for instance, the</p> <p>25 2008 consolidated statement that we've been</p>



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1 minutes.  
2 (Whereupon, a break was taken from 4:36  
3 until 4:40.)  
4 BY MR. STAR:  
5 Q. Getting there.  
6 A. Okay.  
7 Q. You had a chance to review the  
8 document that is marked as number 326?  
9 A. Yes, I have.  
10 Q. I'm interested in your email on  
11 Friday, December 18th, 2009, to Bill Patton  
12 and others, including Michael Lovelace. Do  
13 you see that email?  
14 A. Yes.  
15 Q. Who is Bill Patton?  
16 A. I believe he -- he's the VP of  
17 support for Activant.  
18 Q. At the time you wrote this email,  
19 you had been on Prophet 21 for how long?  
20 A. Since March 30th -- 30th of 2009.  
21 Q. You write in that email, I was  
22 advised yesterday that there has been a  
23 negative 2000 -- \$200,000 impact in bottom  
24 line profits directly related to our  
25 historical low levels of productivity since

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1 going live on this software on April 1, 2009.  
2 Do you see that?  
3 A. Yes.  
4 Q. Was that true?  
5 A. I -- to the best of my  
6 recollection, I would have received that  
7 information from Otto.  
8 Q. So you agree that you had -- that  
9 Hodell's historic low level of productivity  
10 occurred sometime after going live on its  
11 software with Prophet 21, correct?  
12 A. I can't say with certainty.  
13 That's what I typed. I --  
14 Q. Well, when was your --  
15 A. -- probably.  
16 Q. When was Hodell's lowest point of  
17 productivity?  
18 A. I don't specifically recall.  
19 Q. You refer to historic low level  
20 of productivity since going live on the  
21 software. Am I correct to take that to mean  
22 that Hodell's lowest productivity level ever  
23 occurred after you went live on Prophet 21?  
24 A. It may have been. Again, the --  
25 the economy was impacting us in the second and

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1 third, or started impacting us in the second  
2 and third quarter.  
3 Q. How would the economy impact your  
4 productivity, if at all?  
5 A. Sales levels dropping.  
6 Q. What was the \$200,000 impact in  
7 bottom line profits that you were mentioning  
8 here?  
9 A. Again, I believe that was  
10 something relayed to me by Otto. I don't  
11 specifically recall.  
12 Q. Well, I'm trying to understand  
13 what -- what the meaning of your sentence here  
14 was. Were you telling Prophet 21 that Hodell  
15 had -- had suffered historical low levels of  
16 productivity because of Prophet 21?  
17 A. Not necessarily. I'm advising  
18 them that we had historical low levels of  
19 productivity.  
20 Q. Well, if in your view, wasn't  
21 because of Prophet 21, why would you tell  
22 people at Activant any of that information?  
23 A. Because I wanted them to know  
24 that it probably was a component of our  
25 productivity problem. I was being assertive

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1 to push them to get through a meeting, things  
2 done.  
3 Q. So you're being assertive, but  
4 not necessarily telling them the truth?  
5 MR. LAMBERT: Objection.  
6 THE WITNESS: No. I -- I don't believe  
7 I specifically say that that impact in bottom  
8 line profits is directly related to -- to  
9 Prophet 21. But I -- I believe I imply that a  
10 component of it is, by that sentence, by  
11 reading that sentence.  
12 BY MR. STAR:  
13 Q. What component of it was related  
14 to Prophet 21?  
15 A. I don't know specifically.  
16 Q. What would your productivity  
17 levels have been -- have been, had you  
18 remained on SAP?  
19 MR. LAMBERT: Objection.  
20 THE WITNESS: I don't know.  
21 BY MR. STAR:  
22 Q. Would they have been better or  
23 worse than where you got to with Prophet 21?  
24 A. I don't know. We weren't on SAP.  
25 We had to switch, because the system didn't

<p style="text-align: right;">Page 453</p> <p>1 work.</p> <p>2 Q. Although you ran your business on</p> <p>3 it for two years, right?</p> <p>4 A. Not effectively. We were always</p> <p>5 waiting on it.</p> <p>6 Q. How many orders did you ship in</p> <p>7 November of 2009, do you know?</p> <p>8 A. I don't know.</p> <p>9 Q. What -- you mention here</p> <p>10 historical low levels of productivity. What</p> <p>11 exactly did you mean by historical low levels</p> <p>12 of productivity?</p> <p>13 A. Probably the lowest productivity</p> <p>14 levels we had had.</p> <p>15 Q. And how would you have measured</p> <p>16 that at the time that you wrote this email?</p> <p>17 A. Again, if you read the beginning</p> <p>18 of that sentence, I was advised.</p> <p>19 Q. What information was given to you</p> <p>20 that went into this email?</p> <p>21 A. I can tell you what I wrote. I</p> <p>22 was advised yesterday that it was a negative</p> <p>23 200,000 K impact on bottom line profits.</p> <p>24 Q. Who gave you that advice?</p> <p>25 A. Again, I believe it was Otto.</p>	<p style="text-align: right;">Page 455</p> <p>1 change that had happened was a switch in the</p> <p>2 software, yes, then it would be attributable</p> <p>3 to the software.</p> <p>4 Q. Is there any other reason that</p> <p>5 forms the basis of -- of that opinion, that</p> <p>6 whatever product -- alleged productivity</p> <p>7 losses you had in -- during the period of time</p> <p>8 you were on SAP, were directly and fully</p> <p>9 attributable to SAP? Anything else that --</p> <p>10 that --</p> <p>11 MR. LAMBERT: Objection.</p> <p>12 BY MR. STAR:</p> <p>13 Q. -- forms the basis?</p> <p>14 A. I'm not going to testify on --</p> <p>15 MR. LAMBERT: Let me object first.</p> <p>16 THE WITNESS: Yeah.</p> <p>17 MR. LAMBERT: I'm going to object to</p> <p>18 the scope of the designation. There was</p> <p>19 another witness that's previously testified</p> <p>20 and was designated specifically for this</p> <p>21 purpose --</p> <p>22 MR. STAR: He's the president of the</p> <p>23 company. I don't care what capacity he -- he</p> <p>24 testifies in.</p> <p>25 MR. LAMBERT: You can testify if you</p>
<p style="text-align: right;">Page 454</p> <p>1 Q. What did he tell you?</p> <p>2 A. Probably told me that there was a</p> <p>3 negative 200 K impact on bottom line profits.</p> <p>4 Q. Did he blame it on Prophet 21?</p> <p>5 A. I don't know.</p> <p>6 Q. Did he blame your historical low</p> <p>7 levels of productivity on Prophet 21?</p> <p>8 A. I don't -- it was a component,</p> <p>9 but I don't believe anyone believed it was the</p> <p>10 full component. I believe economic impact --</p> <p>11 Q. Okay.</p> <p>12 A. -- was.</p> <p>13 Q. Yet, am I correct that Hodell's</p> <p>14 position today is that the alleged decline in</p> <p>15 productivity that Hodell had during the period</p> <p>16 of time it was on Business One is directly and</p> <p>17 fully attributable to the SAP software? Is</p> <p>18 that your contention today?</p> <p>19 A. Yes, because that was a -- a</p> <p>20 market in the '07 to '09 period, for the</p> <p>21 period of time that we were on SAP, was a time</p> <p>22 in which the economy was growing from -- in</p> <p>23 terms of our business. So if it was growing,</p> <p>24 and the only major change that had happened,</p> <p>25 the economy is growing, and the only major</p>	<p style="text-align: right;">Page 456</p> <p>1 have personal knowledge of --</p> <p>2 MR. HULME: Whoa. Whoa. One person at</p> <p>3 a time.</p> <p>4 MR. LAMBERT: -- sufficient to answer</p> <p>5 the question, but Otto was designated on this</p> <p>6 topic specifically, so --</p> <p>7 MR. STAR: Yeah. Well, when Otto --</p> <p>8 when I asked Otto about Prophet 21, and what</p> <p>9 happened on Prophet 21, he said he couldn't</p> <p>10 answer those questions. He'd have to punt</p> <p>11 that to Kevin.</p> <p>12 MR. LAMBERT: I'm not asking him about</p> <p>13 Prophet 21.</p> <p>14 MR. STAR: So I don't really care. I</p> <p>15 mean, we've got documents here, and I'm trying</p> <p>16 to get answers to the questions.</p> <p>17 BY MR. STAR:</p> <p>18 Q. And I want to know why you tell</p> <p>19 Prophet 21 in 2009 that you suffered a</p> <p>20 \$200,000 loss and had your historically worse</p> <p>21 productivity level ever on that software, yet</p> <p>22 you don't attribute that fully to Prophet 21,</p> <p>23 yet your alleged productivity losses between</p> <p>24 March 2007 and March 2009, while you were on</p> <p>25 Business One, and had your best years ever,</p>